In the High Court of Judicature at Madras

Date : 07..09..2007

Coram :

The Hon'ble Mr. Justice S.J. MUKHOPADHAYA
and
The Hon'ble Mr. Justice N. PAUL VASANTHAKUMAR

Writ Appeal No: 985 of 1998

1. Canara Bank,
rep. by its Dy. General Manager,
Circle Office,
Chennai.

2. The General Manager P.W. & 1,
Canara Bank,
Head Office,
Bangalore. ... Appellants

-vs-

R. Radhakrishnan,
No: 34, North Mada Street,
Madras - 600 034. ... Respondent

Writ appeal under clause 15 of Letters Patent Appeal against the order passed by a learned single Judge of this Court dated 18.06.1998 made in W.P. No: 4902 of 1989 - presented to this Court under Article 226 of the Constitution of India, to issue a Writ of Certiorari calling for the records of the 2nd Respondent herein, and the 1st respondent in MC.DAC.66:37:88 and quashing the order dated 10.1.1989 of the second respondent dated 6.8.88 of the proceedings MC:DAC:11:11:37.

For appellants : Mr. P.R. Raman
For respondent : No appearance

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J U D G M E N T

(Judgment of the Court was
delivered by S.J.Mukhopadhaya, J.)

The appellant, Canara Bank (hereinafter referred to as Bank) has preferred this appeal against the order dated 18th June, 1998 passed by learned single Judge in W.P. No: 4902 of 1989 allowing the writ petition in favour of the respondent. It appears that with regard to certain incidents, the respondent, a sub staff of the bank posted at Panapakkam Branch, Chennai, was suspended. A show cause notice was issued on 11th

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November, 1987 and having found guilty of certain charges, the order of punishment was issued on 6th August, 1988 by the Deputy General Manager. For proper appreciation of the cause and the punishment as inflicted, it is desirable to quote the proceeding of the Deputy General Manager, Chennai, by his order dated 6th August, 1988 as hereunder :

" MC:DAC:1111:E:37. Disciplinary Action Cell
Circle Office, Madras.

PROCEEDINGS OF THE DEPUTY GENERAL MANAGER

Sub: In the matter of alleged misconduct on the part of Sri. R. Radhakrishnan (28675), Sub-staff(u/s) Panapakkam Branch ;

Ref : 1. Charge Sheet No: MC:DAC:160:E:37(CSW-07) dated 11.02.1988.
2. Findings of the Enquiry Officer dated 27.6.88.
3. Final Report of the Enquiry Officer dated 26.07.1988.

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UPON AN ENQUIRY having been held into the matter, the Enquiry Officer found Sri.R. Radhakrishnan (28675), Sub-staff (U/s) Panapakkam Branch guilty of the charges levelled against him and recommended the punishment of :

"WARNING" for Charge-II, as contemplated under Chapet XI Regulation 4 Clause (a) of Canara Bank Service Code :

"STOPPAGE OF INCREMENT FOR A PERIOD OF "SIX MONTHS" for Charge-I,

"STOPPAGE OF INCREMENT FOR A PERIOD OF "ONE YEAR" for Charge-III,

"STOPPAGE OF INCREMENT FOR A PERIOD OF "SIX MONTHS" for Charge-IV, and

"STOPPAGE OF INCREMENT FOR A PERIOD OF "SIX MONTHS" for Charge-V,

as contemplated under Chapter XI Regulation 4 Clause (d) of Canara Bank Service Code ;

AGREEING with the findings and recommendations of the Enquiry Officer and taking all relevant factors into consideration, it is hereby ordered that the following punishments be and hereby imposed on Sri.R.Radhrakrishnan (28675), Sub-staff (u/s), Panapakkam Branch;

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"STOPPAGE OF INCREMENT FOR A PERIOD OF "SIX MONTHS" for Charge-IV, and

"STOPPAGE OF INCREMENT FOR A PERIOD OF "SIX MONTHS" for Charge-V,

as contemplated under Chapter XI Regulation 4 Clauses (d) of Canara Bank Service Code.

The punishment imposed for each charge shall run separately.

The suspension order served on the subject employee will stand revoked from the date the employee reports for duty. The period of suspension shall not be treated as one spent on duty and hence will not be reckoned for any purpose whatsoever.

Sri.R.Radhakrishnan (28675) sub-staff (u/sec.) is directed to report for duty at Tirupattur Branch (48, Krishnagiri Road, Tirupattur, North Arcot District, Pin - 635 601) expeditiously on receipt of this proceedings.

A copy of the report of the Enquiry Officer is enclosed.

Date : 6.August 1988 Deputy General Manager "

2. The respondent - charged employee, thereafter, preferred an appeal before the General Manager, Personnel Wing. It having been rejected by an order dated 10th January, 1989, the writ petition was preferred.

3. In the writ petition, the respondent challenged the order passed by the penal authority as well as the appellate authority and raised the following contentions :

(i) The Enquiry Officer failed to follow the mandatory provision, namely, regulation 11 of the Canara Bank Service code.

(ii) The disciplinary authority failed to follow Regulation 10 (3) of the Regulations.

iii) While imposing a punishment, the disciplinary authority did not consider previous records, gravity of the alleged mis-conduct, etc.

(iv) As per regulation 8 (1) penalty has to be imposed by the General Manager and inasmuch as the penalty has been imposed by the Deputy General Manager in the present case, the said order is contrary to Regulation 8 (i).

(v) As per Regulation 20, the appellate order has to be passed by two general Managers and in our case, the same has been passed by only one General Manager, which is contrary to Regulation 20.

4. The learned single Judge, after discussing the relevant provisions of the regulations allowed the writ petition on the following grounds :

(a) As per Regulation 11 before proposing a punishment, the authority has to consider the gravity of mis-conduct, previous record of the employee, if any and any other aggravating or extenuating circumstances existing at the relevant time ;

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(b) The Enquiry Officer though submitted a report running to several pages, he had not considered the conditions prescribed in Regulation 11 before suggesting proper punishment for the proved charges ;

(c) In the light of the specific provision viz. Regulation 10 (1) coupled with Regulation 11, the conclusion of the Enquiry Officer cannot said to be within regulation of the service code;

(d) As per Regulation 8 (1), the General Manager was the competent disciplinary authority. But the punishment was imposed by the Deputy General Manager, an authority lower in rank than the disciplinary authority and pursuant to amended circular No; 146/85 dated 16.4.1985, a Committee of Two General Managers, other than the General Manager Personnel Wing, or Executive Director or Managing Director have to act as appellate authority. But the appellate order was passed by the General Manager, Personnel Wing.

5. Counsel for the Bank produced the "Canara Bank Service Code" as amended upto 26th May 1972 as also 'Canara Bank Service Code' as amended upto 1986. It was submitted that, the appeal was rightly determined by the General Manager, Personnel Wing, who was the appellate authority as per the amended regulations viz. Regulation 20. Reliance was placed on a letter No: IRS:CNC-57:4060:BPR dated 21st August, 1998. From the said letter it appears that the service code was printed in the year 1972 and afterwards, the said service code was reprinted with amendment in the year 1986. In the meantime, the amendments effected. The appellate authority was the Executive Committee as per old Regulation 20 of the Canara Bank Service Code. It was later on modified and the "Chairman and Managing Director" was made the appellate authority vide circular No: 394/84. Again it was modified and a "Committee of Two General Managers" was notified as appellate authority vide circular No: 148/85, which was noticed by the learned single Judge and even those provisions have been quoted in the judgement. However, it appears that subsequently the appellate authority was changed and the "General Manager, Personnel Wing" was again made the appellate authority, vide circular No: 378/86, which has been reflected in Canara Bank service code published in the year 1986.

6. So far as the punishing authority is concerned, in the year 1972, under Regulation 8 (1) as amended upto 26th May, 1972, the General Manager was the competent authority which was subsequently modified as shown in 1986 publication and quoted herein :

"8. (1) The Deputy General Manager of Circle Office/International Division/Inspection Department/The Assistant General Manager of Personnel Wing, Head Office, may enquire into any misconduct on the part of an employee and impose on him any of the punishments set out in Regulation 4 or Regulation 6 as the case may be of this Chapter."

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7. It appears that the petitioner brought to the notice of the learned Single Judge, the old regulation 8 (1) wherein the General Manager was empowered to punish an employee. The amended regulation 8 (1), by which the Deputy General Manager was empowered to pass such an order, which was applicable in the present case, was not brought to the notice of the learned single Judge. So far as Regulation 11 is concerned, it deals with the manner in which punishment can be awarded. It can be passed by the competent authority taking into account the gravity of the misconduct., the previous records, etc. as evident from the said regulation 11 and quoted here under :

> " 11. In awarding punishment under this Chapter, there shall be taken into account the gravity of the misconduct, the previous record, if any, of the employee and any other aggravating or extenuating circumstances which may exist. Where sufficiently extenuating circumstances exist the misconduct may be condoned and in case such misconduct is of the gross type he may be merely discharged with or without notice or on payment of a month's salary and emoluments in lieu of notice. Such discharge may also be given where the evidence is insufficient to sustain the charge but where on grounds of expediency or other grounds it is deemed undesirable to retain the employee in question any longer in service of the Bank ; the discharge in such a case shall not be deemed to amount to disciplinary action."

8. In the present case, the order of punishment has been passed by the Deputy General Manager taking into consideration the recommendations of the Enquiry Officer. Thus, it will be evident that the order was passed by the competent authority empowered under the amended regulation No : 8 (1). So far as the appeal is concerned, it will be evident that the respondent employee was aware of the fact that Regulation 20 as amended in the year 1985 was further amended and shown in 1986 publication. Only for the said reason, he preferred the appeal before the General Manager, Personnel Wing of the Bank and not before the Two Member Committee of General Managers. Apart from the fact that the General Manager, Personnel Wing, is the competent authority under 1986 Regulations, the respondent employee having submitted such an appeal before him, it was not open for him to assail the appellate order on the ground that it was not passed by a Two Member Committee of General Managers. If such submission is accepted then it is to be presumed that the respondent employee had not at all preferred an appeal before the competent authority i.e. two General Manager Committee and he cannot derive any advantage of the same.

9. Regulation 11 is an enabling provision for the disciplinary authority to decide as to what punishment could be inflicted. For the said purpose he is not only required to look into the gravity of the mis-conduct, but also the previous record. Further, on the basis of the previous records if it appears that the charged employee is habitual to such mis-conducts, apart from the gravity of the charges as shown in the particular proceedings, more harsh punishment can be imposed. Similarly,

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if there is sufficient extenuating circumstances exist, it is open to the authority to condone such mis-conduct.

10. In the present case, from the impugned order of punishment dated 06.08.1988, it would be evident that minor punishment namely stoppage of increment for 6 months or 1 year was imposed, which are to run separately; combining together it may be a stoppage of increment for about two and half years, but as the charged employee failed to bring on record that there was sufficient extenuating circumstances existed to condone such mis-conduct he cannot claim any benefit of Regulation 11. In this background, the minor punishment being imposed on the charged employee, the order of punishment having been passed by the competent authority and the appeal having been disposed of by the competent appellate authority, there was no reason for the learned single Judge to interfere with the said order. We accordingly set aside the impugned order dt. 18.06.1998 passed by the learned single Judge. The writ petition is dismissed and the writ appeal is allowed.

Sd/-
Asst. Registrar.

/true copy/

Sub Asst. Registrar.

gp

To
1. The Deputy General Manager,
Canara Bank,
Circle Office, Chennai.

2. The General Manager, P.W. & 1,
Canara Bank, Head Office,
Bangalore.

+ 1 CC To Mr. P.R.Raman, Advocate SR NO.56366

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